

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5143 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RANCHHODBHAI V PATEL & ORS.

Versus

STATE OF GUJARAT & ORS.  
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Appearance:

MR VS MEHTA for Petitioners  
MS SIDDHI TALATI for Respondents No.1 & 2  
None present for Respondent No.3  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/09/97

ORAL JUDGMENT

#. The petitioners, the owners and holders of the land bearing Survey No.857 comprised in revenue village Vavol of Taluka-District Gandhinagar, filed this Special Civil Application and prayer has been made to quash and set aside the order dated 29th October 1985, of respondent No.3, annexure 'F' to the petition.

#. There is no dispute that the land in question is comprised in the controlled area declared under the Gujarat New Capital (Periphery) Act, 1960 (hereinafter referred to as the 'Act 1960'). However, the respondents have disputed the fact that the land in question is situated in the existing village zone (Gamtal) of village Vavol. The petitioners were intending to construct residential houses for their own personal use and occupation on the said lands and for this purpose on 25.1.85 they submitted an application to the respondent No.1 purporting to be u/s.11 of the Act 1960 for grant of non agricultural permission in respect of the said land. The learned counsel for the petitioners submitted that the whole of the land is not to be converted but the petitioners wanted to raise construction only on a reasonable part of the land. However the petitioners have not disclosed on how much area, out of this land, they were intending to raise construction of their own houses. On this application of the petitioner, order has not been passed by the respondents. The petitioners sent a letter dated 21.8.85 to the respondent No.1 copy whereof has been sent to respondents No.2 and 3 under which necessary facts as well as legal position were stated to be brought to their notice. All such facts and legal consequences thereof have specifically been mentioned in the said letter that in case any order on the application is not made, then by legal fiction, the permission shall be deemed to have been made. They further stated that they are going ahead with construction of residential houses on the said land in accordance with lay out and building plans which were annexed with the application for non agricultural permission. This application of the petitioners was rejected by respondent No.1 under its order dated 29th October 1985, however, after filing of this Special Civil Application. The petitioners have come up before this Court at the stage when that application was not decided. They amended this Special Civil Application and challenged the validity of that order. This application of the petitioners was rejected by respondents on the grounds namely, (i) population of village Vavol as per Census taken in 1981 is 4612 and (ii) as per "use zone" table published under section 4(1) of the Act 1960, permission for natural development can be granted in respect of land within 100 mts. from the village site in villages whose population is upto 5000 and within area of 200 mts. from the village site of the village whose population is more than 5000. The land of the petitioners was stated to be at a distance of 300 mts. from the village site.

#. Reply to the Special Civil Application has been filed by respondents and the justification of rejecting the application of the petitioner for non agricultural permission has been given on the very grounds on which that application has been rejected under the impugned order.

#. The learned counsel for petitioners, Shri V.S.Mehta, raised manifold contentions challenging the legality and validity of the impugned order, but I do not consider it to be necessary to advert to all the contentions as in my view, the contention raised of discrimination on which no consideration has been made by respondent while rejecting the application of the petitioner, deserves acceptance for consideration by the said authority.

#. A copy of the application filed by the petitioners before the respondent No.1 under Section 11 of the Act 1060 is placed on record of this Special Civil Application. In the application, the petitioner has given out that in many of the cases, permission for non agricultural use has been granted in respect of the lands situated at a distance greater than 200 mts. In this category, the petitioners cited cases of Pethapur Survey No.1946 which was stated to be 1500 mts. from the village site. Next case has been cited of Bohra International Film Studio on Ahmedabad-Gandhinagar highway which was also stated to be 1500 mts. away from village site. The third case in this category was cited of Shertha survey No.1057 which was stated to be 600 mts. away from the village site. The second category of cases are of the very village of the petitioners. The petitioners stated that permission has been granted of the lands bearing Survey Nos,1209, 1214, 833, 836 etc. adjacent to Survey No.857 of the petitioners. Emphasis has been put by the petitioners on the fact that the lands of Survey No.1209 is adjacent to the petitioners land and on which construction has already been made.

#. In the impugned order, this vital issue has not been taken note of, what to say to decide it. The petitioners in the Special Civil Application have pleaded these facts in para 4(C) thereof but the respondent No.3 has not controverted these facts specifically. What reply has been given of these facts by respondent No.3 in its reply is relevant and as such I consider it to be appropriate to reproduce the relevant part of the reply of respondent No.1 and the same reads as under:

....I submit that permission referred to by the

petitioners in this para are absolutely irrelevant and therefore I do not deal with them. I submit that the permission under section 11 of the Act is given after considering facts and circumstances of each case. In the instant case I submit that respondent No.1 has rightly decided not to grant permission to the petitioners to use the land in question for constructing residential houses thereon.

From a mere reading of this averment in the reply necessary inference follows therefrom is that the averments made by petitioners in para 4(C) of the petition as well as in the application stand uncontroverted. The justification has been given for not granting the permission for non agricultural use in this case is on the ground that each case has to be considered on its own facts and circumstances. It is true each case has to be considered on its own facts and circumstances, but where a citizen of this country comes with a plea of discrimination that identically situated lands were given permission, it is obligatory on the part of respondent No.1, which is a welfare State, to give out reasons for making deviation of law in the cases of those persons. If any reasons are not given in the order as well as no justification is given before this Court for this discriminatory treatment given to the petitioners, by none other than a welfare State, then obviously an inference can be drawn that those persons may be powerful or influential persons.

#. The learned counsel for respondents is unable to give any satisfactory reply to these contentions raised by learned counsel for the petitioners. However, the learned counsel for the respondents has made a submission that even if it is taken that in the case of other persons of the same village the permission has been granted, then the same is illegal and on the basis of illegal orders, no plea of discrimination is available to the petitioners and this Court may not grant the same relief to them as two wrongs cannot make one thing right. It is true that the plea of discrimination is not tenable on the ground of some other illegal order but it is not the case of respondents that in those cases, the orders have been passed illegally. It is also not the case of respondents that those cases are not identical to the case of petitioners. Normally, presumption is that the respondent-State acts according to law and when the permission has been granted in respect of land bearing Survey No.1209, which is adjacent to the petitioner's land, then presumption is that the said permission has

rightly been granted unless otherwise contrary stated by the respondents.

#. Taking into consideration the totality of the facts of this case, I am satisfied that the respondent No.1 could not have backed out from their obligation of deciding the plea of discrimination raised by the petitioners, on merits. This is a very serious matter where the citizens are coming up with the plea that the State Government is making discrimination in the matter of grant of Non Agricultural permission. In the result, this Special Civil Application succeeds and the same is allowed. The order of the respondent No.1 dated 29th October 1985, annexure 'F' is quashed and set aside and the matter is sent back to respondent No.1 to decide the application filed by the petitioners dated 25th January 1985, under Section 11 of the Act 1960, on merits and in particular, with reference to the plea of discrimination raised by the petitioners therein. The matter is pending since about 12 years and as such, it is expected that the respondent No.1 shall decide the same expeditiously, say within a period of six months from the date of the receipt of the certified copy of this order. While dealing with this application, the petitioners will give out how much land they require to raise construction and in case ultimately their claim is accepted, then it should be only to the extent of the land which is reasonably required by them for constructing houses, looking to the status, capacity of bearing expenses of construction etc. It is a case where the petitioners have been compelled to approach this Court and the respondents have failed to consider the contentions raised by them of discrimination and still in the reply the respondents are unable to give satisfactory explanation for the same, I therefore consider it to be a fit case where the petitioners should be reimbursed for the expenses which they have incurred in filing this Special Civil Application before this Court. The learned counsel for the petitioners, on being asked by the Court, submitted that the petitioners have incurred expenses of filing of this Special Civil Application, i.e. fees and the actual expenses of typing, Court fees etc. to the tune of Rs.5,000/-. The respondents are directed to pay Rs.5,000/- by way of costs of this petition to the petitioners. Rule made absolute in aforesaid terms.

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(sunil)